

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
SPECIAL EDUCATION APPEALS**

In Re: Brockton Public Schools v.
Student

BSEA #1601536

Ruling on Brockton Public Schools' Motion for an Order of Stay-put at the Goddard School

Brockton Public Schools (Brockton) filed a Hearing Request on August 17, 2015 which included a Motion for an Order of Stay-put at the Goddard School.

On August 24, 2015, Parent requested a postponement of the Hearing scheduled for September 8, 2015, noting that she was moving out of district. On August 26, 2015, the matter was scheduled as a telephone conference call which was held on August 31, 2015. The purpose of the call was to ascertain Parent's intentions and concerns regarding the proposed program in Brockton, as well as to discuss her position regarding Stay-put. Two other telephone conference calls followed on September 3, 2015.

During the initial call Parent notified the BSEA that she intended on moving out of Brockton on October 1, 2015. The discussion then centered on the program Student would attend pending her move out of district and Parent was advised to forward a list of her concerns in writing to Brockton so as to ascertain whether the matter could be resolved short-term pending her move. Parent's written statement, received on September 2, 2015, contains her counter-claims/concerns which include Student's safety, the appropriateness of the school's proposed program and lack of an after-school program. Parent however, did not submit any response to Brockton's Motion for Stay-put.

On September 3, 2015, Brockton notified the BSEA that Student had not attended the first days of school and reiterated its desire to proceed to Hearing, but did not object to postponement of the initial Hearing date.

This Ruling **GRANTS** Parent's request for postponement of the Hearing and addresses Brockton's Motion for clarification of Student's Stay-put placement in Brockton.

FACTS:

The following facts are assumed to be true for purposes of this Ruling only:

1. Born in February of 2001, Student is a fourteen year old resident of Brockton, Massachusetts, who has been found eligible to receive special education services

under the category of Emotional Impairment. Student's deficits include difficulty with self-regulation, distractibility, following directions and impulse control.

2. Student completed eighth grade at the Italian Home for Children as a day student, where he was placed pursuant to an IEP written by Brockton.
3. In September 2015 Student will be entering the ninth grade.
4. On March 24, 2015, Student's Team convened at the Italian Home For Children to conduct the Annual Review. Student's providers noted that he had made great progress, had developed positive relationships with peers and adults and academically was functioning within the average range. His clinician reported that Student enjoyed and had done well in one-to-one therapy. His teacher noted that Student required the structure of a small classroom setting with approximately three adults and seven children and also required a structured school day with hands-on activities. The Team further discussed Student's educational and therapeutic needs, Student's transition into high school, and considered a less restrictive educational setting.
5. Brockton proposed to continue Student's placement at the Italian Home for Children from March 2015 to June 2015, and proposed to start Student at the Goddard Public Day School in Brockton starting in September 2015.
6. The Goddard Alternative School is a Department of Elementary and Secondary Education (DESE) approved therapeutic day school. It offers students grades 3 to 12 comprehensive psychological services including 24 hour wrap-around support, a highly structured behavior management program (including a point level system), therapeutic supports, and specialized instruction aligned with the district wide curriculum. The school follows a school-wide behavior support plan. It also offers vocational planning/training, and weekly activities that foster a sense of community.
7. On April 2, 2015, Parent fully accepted the IEP and the proposed placements, the Italian Home for Children through June 2015 and the Goddard School from September 1, 2015 to March 22, 2016.
8. On June 23, 2015, Parent rejected the placement at the Goddard School.
9. Parent asserts that the point/level system does not work for Student because of his anxiety and low self-esteem issues. She also stresses the need for weekly individual therapy, the need for an onsite psychiatrist, a great deal of one-to-one attention during academics, twice per week speech and language therapy, and participation in a social club to address socialization issues. Access to hands-on vocational opportunities is also needed. Parent also requested that Student participate in an extended day program as well as transportation to get him there.

10. Parent is most concerned about Student's safety, noting that he cannot be left alone or he will "take off", and that he also needs access to a "safe room" when he is frustrated, as his inability to properly handle frustration can cause him to become violent. According to Parent, Student has great difficulty when introduced to new situations, people or routines. Given Student's issues, Parent has strong reservations about the Goddard Alternative School's program offered by Brockton.
11. Administrative notice of the Italian Home for Children shows that the school provides services to emotionally challenged boys and girls ages 4 to 14.

LEGAL CONCLUSIONS:

The BSEA's jurisdiction to address maintenance of a student's placement during the pendency of an IDEA proceeding can be found at 20 USC 1415(j), 34 CFR 300.518 and 603 CMR 28.08(7). Brockton seeks clarification of Student's Stay-put placement pending completion of the Hearing on the merits.

Federal and Massachusetts special education laws mandate that students remain in their "then current" educational placement during the pendency of any dispute unless parents and the school district agree otherwise. 20 USC §1415(j); 34 CFR 300.518(a); G.L. c.71B §3; 603 CMR 28.08 (7). This right is commonly known as Stay-put.

In determining a student's stay-put program and placement, a Hearing Officer must look at the student's last accepted IEP and examine the particular facts of the case. See *Hale v. Poplar Bluff R-I School District*, 280 F.3d 831 (8th Cir. 2002) (which calls upon the fact finder to inquire as to the specific facts of the case to examine the impact that educational changes may have on the student).

Here, Brockton asserts that Parent's acceptance of the proposed IEP in April 2015, calling for the Goddard School, determines Student's Stay-put.

Determination of a student's Stay-put placement involves a narrow review of the facts as Stay-put seeks to maintain the *status quo* by not unnecessarily disturbing the student's educational life during the pendency of any IDEA proceeding. Seen from this standpoint it would appear that since the IEP proposed by Brockton in the case at bar had not yet been implemented, albeit initially accepted, maintenance of the *status quo* would call for Student to remain at the Italian Home for Children, the placement he last attended. See *Thomas v. Cincinnati Bd of Educ.*, 918 F.2d 618, 626 (6th Cir. 1990).

"If an IEP has been implemented, then that program's placement will be the one subject to the stay put provision. And where, as here the dispute arises before any IEP has been implemented, the "current educational placement" will be the operative placement under which the child is actually receiving instruction at the time the dispute arises. *Thomas v. Cincinnati Bd of Educ.*, 918 F.2d 618, 626 (6th Cir. 1990).

Student's Stay-put placement is the Italian Home for Children or an equivalent private day program during the pendency of the appeal.

Lastly, since Brockton did not object to postponement of the initial Hearing date, Parent's request is **GRANTED**. However, in deference to Brockton, a new Hearing date will be selected during an upcoming telephone conference call scheduled for September 4, 2015.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: September 4, 2015